

**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**  
**Trademark Trial and Appeal Board**  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

JST

Mailed: May 10, 2004

Opposition Nos.  
91157735; 91158153; and  
91158172

TBC BRANDS, LLC

v.

KUMHO Industrial Co., Ltd.  
and KUMHO TIRES CO., INC.,  
joined as party defendants  
(as consolidated)

**Jyll S. Taylor, Attorney:**

**OPPOSITION NO. 91157735**

**Motion to Join a Party Granted**

Applicant's motion (filed November 20, 2003) to join Kumho Tires Co., Inc. as a defendant in this proceeding, with opposer's consent, is granted.<sup>1</sup>

**Motion to Extend Granted**

Applicant's consented motion (filed March 30, 2004) to extend discovery and trial dates is granted. Trademark Rule 2.127(a).

Opposer's "response" to the motion to extend is noted. Opposer should note that the Board has considered the second

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<sup>1</sup> A copy of the assignment of involved application Serial No. 76/416503 is recorded in the Assignment Services Division of the Office at Reel/Frame Number 2729/0641.

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paragraph of the motion to extend solely as notification of other Board proceedings involving related marks as requested by the Board in the institution orders for all three cases.<sup>2</sup>

**OPPOSITION NO. 91158172**

**Motion to Join a Party Granted**

Applicant's motion (filed November 26, 2003) to join Kumho Tires Co., Inc. as a defendant in this proceeding, with opposer's consent, is granted.<sup>3</sup>

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**Consolidation Ordered**

The Board hereby orders the consolidation of the above-referenced proceedings inasmuch as the parties are the same and the three proceedings involve common questions of law or

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<sup>2</sup> On May 5, 2004, applicants filed with the Board copies of their first set of interrogatories to opposer and first requests for production of documents. Apparently, these interrogatories and document requests were served on opposer. However, requests for discovery, responses thereto, and materials or depositions obtained through the discovery process should not be filed with the Board except when submitted (1) with a motion relating to discovery; or (2) in support of or response to a motion for summary judgment; or (3) under a notice of reliance during a party's testimony period; or (4) as exhibits to a testimony deposition; or (5) in support of an objection to proffered evidence on the ground that the evidence should have been, but was not, provided in response to a requests for discovery. Discovery papers or materials filed under other circumstances will not be considered by the Board. See 37 CFR §2.120(j)(8), and TBMP § 409 (2d edition, rev.1 March 2004).

<sup>3</sup> A copy of the assignment of involved application Serial No. 76/416504 is recorded in the Assignment Services Division of the Office at Reel/Frame Number 2728/0360.

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fact.<sup>4</sup> In view thereof, Opposition Nos. 91157735; 91158153; and 91158172 are hereby consolidated.

The consolidated cases may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993).

The Board filed will be maintained in Opposition No. 91157735 as the "parent" case. As a general rule, from this point on only a single copy of any paper or motion should be filed herein; but that copy should bear all three proceeding numbers in its caption.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleading; a copy of the decision shall be placed in each proceeding file.

In accordance with Board practice, the discovery and trial dates are reset to those of the "youngest" case, i.e., 91158172, which are repeated below for the parties' convenience.

Discovery period to close:

**May 09, 2004**

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<sup>4</sup> When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. See Fed. R. Civ. P. 42(a); see also, *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991).

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30-day testimony period for party  
in position of plaintiff to close:

**August 07, 2004**

30-day testimony period for party  
in position of defendant to close:

**October 06, 2004**

15-day rebuttal testimony period  
for plaintiff to close:

**November 20, 2004**

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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